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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,364	12/12/2001	Frederick Eldin Niemi	112025-0073C2	9644

24267 7590 06/01/2004
CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON, MA 02210

EXAMINER

GEREZGIHER, YEMANE M

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,364

Applicant(s)

NIEMI, FREDERICK ELDIN

Examiner

Yemane M Gerezgiher

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/28/2003</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application has been examined. Claims 1-21 are pending.

Allowable Subject Matter

2. The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art of record taken singularly or in combination taught or suggested a network devices monitoring scheme comprising a distributor receiving a message from an entity detecting an anomaly on a network device and using a filter device for testing value of an argument contained in the message using a filter including filtering expression that is created on run time; and transmitting device for transmitting the received message if the run time created expression is true.

Claim Objections

3. Claim 20 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claims 12, 16 and 17 are directed to a method for operating a computer, which inherently comprise a computer readable media having instructions for executing on the computer for the practice of the claimed method. Thus, claim 20 is redundant, because it does not further limit the claimed invention.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 18, 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 18 recites, "A node for carrying out the method according to claim ... " (claim 18, Claim Line 1). It is not clear whether the "node" is software or a hardware object that have a processor to carryout the method as claimed.
 - The examiner will presume the term "node" to mean a hardware device with a processor that can be configured to process the claimed method.
- As per claim 19, the inventive entity recites the following:

A computer network, comprising:

At least one computer, *the computer connected into the network, as claimed in claim 1 or claim 8 or claim 11.*

By definition, a network has a group of two or more computer systems linked together or in other means, a network is defined as two or more computers connected together with the ability to communicate with each other. Thus, it is inaccurate claim, because "one computer" does not make a network.

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 21 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

- As per claim 21, *Electromagnetic signals traveling over a computer network, comprising: the electromagnetic signals carrying instructions for executing on a computer for the practice of the method of claim 12 or 16 or claim 17.*
 - This claim is directed to a non-statutory subject matter (**a signal per se**), which is not tangibly embodied on a computer readable medium so is to be executable.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 10 and 18/12 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 6, 10 and 16 of prior U.S. Patent No. 6,381,630.

This is a double patenting rejection.

Application SN 10/021364	U.S. Patent Number 6,381,630
<p>Claim 12, recites:</p> <p>A) receiving a message that indicates an anomaly on a network device;</p> <p>B) compiling a filtering program that is associated with the message;</p> <p>C) filtering the message in accordance with the filtering program by testing an argument value in the message in accordance with a filtering expression of the filtering program, and the filtering expression is created at run time; and,</p> <p>D) distributing the filtered message if a result of the filtering expression is true.</p>	<p>Patented Claim 6, disclosed:</p> <p>A) receiving a message that indicates an anomaly on a network device;</p> <p>B) compiling a filtering program that is associated with the message;</p> <p>C) filtering the message in accordance with the filtering program by testing an argument value in the message in accordance with a filtering expression of the filtering program wherein the filtering expression is created at run time; and</p> <p>D) distributing the filtered message if a result of the filtering expression is true.</p>
<p>Claim 18, recites:</p> <p>A node for carrying out the method according to claim 12 ...</p>	<p>Patented Claim 10, disclosed:</p> <p>A node for carrying out the method according to claim 6</p>
<p>Claim 10 recites:</p> <ul style="list-style-type: none"> • a distributor software application on said computer for receiving at least one message that indicates an anomaly on a network device; • means for compiling a filtering program that is associated with the at least one message; 	<p>Patented Claim 16, disclosed:</p> <ul style="list-style-type: none"> • a distributor software application on said computer for receiving at least one message that indicates an anomaly on a network device; • a means for compiling a filtering program that is associated with the at least one message;

<ul style="list-style-type: none">• a filtering device for use by the distributor to test a value of an argument contained in the message, the filtering program being created at run time; and,• means for distributing the message if a result of the filtering program is true.	<ul style="list-style-type: none">• a filtering device for use by the distributor to test a value of an argument contained in the message, wherein the filtering program is created at run time; and• a means for distributing the message if a result of the filtering program is true.
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The above rejected claim 16 of application # 10/021364 and the patented claim 6 are identical except for the preamble. However, a preamble is generally not accorded any patentable weight when the body of the claim does not include limitation or terms that are recited in the preamble. In this case, Non of the body of claim 12 of the application and the body of the patented claim 6 incorporate terms recited in the preamble of the claims.

This is double patenting rejection.

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-9, 11, 13-17, 19-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,381,630. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the patented claims and the pending claims are minor wording variations and omission of undesired terms which does not change the scope of the invention as claimed.

Application SN 10/021364	U.S. Patent Number 6,381,630
Claim 1 recites: <ul style="list-style-type: none">• a distributor that receives a message from an entity that detects an anomaly on a network device;• a filtering device, for use by the distributor, tests a value of an argument contained in the message using a filtering expression that is created at nm time; and,• a transmitting device for transmitting the message if a result of the filtering expression is true.	Patented Claim 1, disclosed: <ul style="list-style-type: none">• a distributor that receives a generated message from an entity that detects an anomaly on a network device;• a filtering device for use by the distributor that contains a filtering expression for testing a value of an argument contained in the generated message, wherein the filtering expression is created at run time; and• a transmitting device for transmitting the message if a result of the filtering expression is true.
Claim 2, recites: <ul style="list-style-type: none">• the distributor compiles each filtering device, and the filtering device is a filtering program, and the filtering program is programmed in a programming language that can be compiled.	Patented Claim 2, disclosed: <ul style="list-style-type: none">• the distributor compiles each filtering device, wherein the filtering device is a filtering program, the filtering program is programmed in a programming language that can be compiled.

Claim 3 recites: <ul style="list-style-type: none">the distributor dynamically loads the compiled filtering program before executing the filtering expression in the filtering program.	Patented Claim 3, disclosed: <ul style="list-style-type: none">the distributor dynamically loads the compiled filtering program before executing the filtering expression in the filtering program.
Claim 4 recites: <ul style="list-style-type: none">the filtering program includes a test implemented in a Boolean statement.	Patented Claim 4, disclosed: <ul style="list-style-type: none">the filtering program includes a test implement in one of a Boolean statement and ...
Claim 5 recites: <ul style="list-style-type: none">the filtering program includes a test implemented in a SQL statement.	Patented Claim 4, disclosed: <ul style="list-style-type: none">the filtering program includes a test implement in ... a SQL statement.
Claim 6, recites: <ul style="list-style-type: none">the filtering program includes a programming expression that performs queries on at least one individual message.	Patented Claim 5, disclosed: <ul style="list-style-type: none">the filtering program includes a programming expression that performs queries on one of an individual message and a group of messages.
Claim 7, recites: <ul style="list-style-type: none">the filtering program includes a programming expression that performs queries on a group of messages.	Patented Claim 5, disclosed: <ul style="list-style-type: none">the filtering program includes a programming expression that performs queries on one of an individual message and a group of messages
Claim 8, recites: <ul style="list-style-type: none">a distributor that receives a message from a network device, the message containing a value of an argument, the distributor	Patented Claim 18, disclosed: <ul style="list-style-type: none">receiving a message into a distributor software application, said message indicating an anomaly on a network device;

<p>testing the value of the argument in accordance with a filtering expression to distribute the message if a result of the filtering expression is true; and</p> <ul style="list-style-type: none"> • a filtering device that creates the filtering expression at run time. 	<p>filtering the message by a filtering program that contains a filtering expression for testing a value of an argument contained in the message, wherein the filtering expression is created at run time; and</p> <ul style="list-style-type: none"> • transmitting the message through a transmitting device if a result of the filtering expression is true.
<p>Claim 9 recites:</p> <ul style="list-style-type: none"> • a distributor for receiving at least one message that indicates an anomaly on a network device; • means for compiling a filtering program that is associated with the at least one message; • a filtering device for use by the distributor tests a value of an argument contained in the at least one message, using a filtering program that is created at run time; and, • means for distributing the message if a result of the filtering program is true. 	<p>Patented Claim 14, disclosed:</p> <ul style="list-style-type: none"> • a distributor for receiving at least one message that indicates an anomaly on a network device; • a means for compiling a filtering program that is associated with the at least one message; • a filtering device for use by the distributor to test a value of an argument contained in the message, wherein the filtering program is created at run time; and • a means for distributing the message if a result of the filtering program is true.
<p>Claim 11, recites:</p> <ul style="list-style-type: none"> • a distributor software application on said computer for receiving at least one message that indicates an anomaly on a network device; 	<p>Patented Claim 16, disclosed:</p> <ul style="list-style-type: none"> • a distributor software application on said computer for receiving at least one message that indicates an

<ul style="list-style-type: none"> • a compiler to compile a filtering program that is associated with the at least one message; • a filtering device for use by the distributor to test a value of an argument contained in the message, wherein the filtering program is created at run time; and • a transmitting device to transmit the message if a result of the filtering program is true. 	<p>anomaly on a network device;</p> <ul style="list-style-type: none"> • a means for compiling a filtering program that is associated with the at least one message; • a filtering device for use by the distributor to test a value of an argument contained in the message, wherein the filtering program is created at run time; and • a means for distributing the message if a result of the filtering program is true.
<p>Claim 13 recites:</p> <ul style="list-style-type: none"> • writing and compiling the filtering program in a language similar to that of the distributor. 	<p>Patented Claim 7, disclosed:</p> <ul style="list-style-type: none"> • ... compiling comprises the ... writing and compiling the filtering program in a language similar to that of the distributor.
<p>Claim 14 recites:</p> <ul style="list-style-type: none"> • loading the compiled filtering program; and, • executing the filtering expression. 	<p>Patented Claim 8, disclosed:</p> <ul style="list-style-type: none"> • dynamically loading the compiled filtering program; and • executing the filtering expression.
<p>Claim 15 recites:</p> <ul style="list-style-type: none"> • altering the filtering program dynamically during run time in response to the anomaly. 	<p>Patented Claim 9, disclosed:</p> <ul style="list-style-type: none"> • ... dynamically altering the filtering program during run time in response to the anomaly.
<p>Claim 16 recites:</p>	<p>Patented Claim 15, disclosed:</p>

<ul style="list-style-type: none">• receiving a message into a distributor, the distributor receiving state messages from producers and transmitting the state messages to the appropriate network consumer, the message indicating an anomaly on a network device;• filtering the message by a filtering program that contains a filtering expression for testing a value of an argument contained in the message, and the filtering expression is created at run time; and• transmitting the message through a transmitting device if a result of the filtering expression is true.	<ul style="list-style-type: none">• receiving a message into the distributor that indicates an anomaly on a network device;• filtering the message through by a filtering program that contains a filtering expression for testing a value of an argument contained in the message, wherein the filtering expression is created at run time; and• transmitting the message through a transmitting device if a result of the filtering expression is true.
Claim 17 recites: <ul style="list-style-type: none">• receiving a message into a distributor software application, said message indicating an anomaly on a network device;• filtering the message by a filtering program that contains a filtering expression for testing a value of an argument contained in the message, and the filtering expression is created at run time; and,• transmitting the message through a transmitting device if a result of the filtering expression is true.	Patented Claim 15, disclosed: <ul style="list-style-type: none">• receiving a message into the distributor that indicates an anomaly on a network device;• filtering the message through by a filtering program that contains a filtering expression for testing a value of an argument contained in the message, wherein the filtering expression is created at run time; and• transmitting the message through a transmitting device if a result of the filtering expression is true.
Claim 19, recites: <ul style="list-style-type: none">• A computer network, comprising: at least one computer, the computer	Patented Claim 17, disclosed: <ul style="list-style-type: none">• A packet switching communication network comprising at least one node

connected into the network, as in claim 1 or claim 8 or claim 9 or claim 10 or claim 11.	according to claim 16.
Claim 20 recites: <ul style="list-style-type: none">instructions written on the computer readable media, the instructions for executing on a computer for the practice of the method of claim 12 or claim 16 or claim 17.	Patented Claim 11, disclosed: <ul style="list-style-type: none">instructions and data written on said computer readable medium, said instructions and data containing information for the practice of the method of claim 6.
Claim 21 recites: <ul style="list-style-type: none">Electromagnetic signals traveling over a computer network, comprising: the electromagnetic signals carrying instructions for executing on a computer for the practice of the method of claim ...	Patented Claim 12, disclosed: <ul style="list-style-type: none">Electromagnetic signals traveling over a computer network comprising: said electromagnetic signals carrying information for the practice of the method of claim ...

This is obviousness-type double patenting.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

- a. Dong, Jianming et al. (U.S. Patent Number 6571275 B1) Entitled:
Method and apparatus for filtering messages in a data processing system
- b. Cobb, Christopher Alan (U.S. Patent Number 6199102 B1)
Entitled: *Method and system for filtering electronic messages*
- c. Chu, Clare (U.S. Patent Number 6182119 B1) Entitled:
Dynamically configurable filtered dispatch notification system

- d. Narasimhan, Anand et al. (U.S. Patent Number 6073165 A)
Entitled: Filtering computer network messages directed to a user's e-mail box based on user defined filters, and forwarding a filtered message to the user's receiver
- e. Arrowsmith, Russell et al. (U.S. Patent Number 6057757 A)
Entitled: *Method and apparatus for policy-based alarm notification in a distributed network management environment*
- f. Cohen, Richard Jay (U.S. Patent Number 5881315 A) Entitled:
Entitled: *Queue management for distributed computing environment to deliver events to interested consumers even when events are generated faster than consumers can receive*
- g. Otteson, Steven D. (U.S. Patent Number 5867659 A) Entitled:
Method and apparatus for monitoring events in a system
- h. Hussey, Peter (U.S. Patent Number 5826269 A) Entitled:
Electronic mail interface for a network server
- i. Bellovin, Steven Michael et al. (U.S. Patent Number 5805820 A)
Entitled: *Method and apparatus for restricting access to private information in domain name systems by redirecting query requests*
- j. Singh, Surinder et al. (U.S. Patent Number 5758083 A) Entitled:
Method and system for sharing information between network managers
- k. Bonnell, David N. et al. (U.S. Patent Number 5655081 A) Entitled:
System for monitoring and managing computer resources and applications

*across a distributed computing environment using an intelligent
autonomous agent architecture*

- l. Hershey, Paul C. et al. (U.S. Patent Number 5568471 A) Entitled:
*System and method for a workstation monitoring and control of
multiple networks having different protocols.*

NON-PATENT DOCUMENT

- m. Meyer et al, "Performance analysis of distributed applications with
ANSAMon", Feb. 1995, International Conference on Open Distributed
Process- ing (ICODP '95), "Participant's proceedings" edition, pages
293—304.
- n. Lane et al, "An application of machine learning to anomaly
detection", (Baltimore, MD. 1997), In National Information Systems
Security Conference, Volume 1 pp. 366--380.
13. Any inquiry concerning this communication or earlier communication from
the examiner should be directed to Yemane Gerezgiher whose telephone
number is 703-305-4874. The examiner can normally be reached on Monday-
Friday from 9:00 AM to 5:30 PM.
- If attempts to reach the examiner by telephone are unsuccessful. The
examiner's supervisor, William Cuchlinski, can be reached at (703) 308-3873.

Yemane M. Gerezgiher
AU 2144

MARC D. THOMPSON
MARC THOMPSON
PRIMARY EXAMINER